

## **Committee on Antidumping Practices**

### **Status**

The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement) provides detailed rules and disciplines which allow Members to impose antidumping duties in carefully circumscribed situations to offset injurious dumping of products exported from one Member country to another.

The Ad Hoc Group on Implementation is an important subsidiary body of the Antidumping Committee. The Group focuses on implementation of the Antidumping Agreement. Members meet to discuss specific topics, in order to understand similarities and differences in their policies and practices in implementing the terms of the Agreement. Members provide papers in advance of each meeting on the topics that will be discussed. This enhances the depth of the discussions, and gives all Members an opportunity to describe their own laws, policies and practices in writing and to put forward questions about operational and other practical aspects of conducting antidumping investigations. Since the inception of the Ad Hoc Group, the United States has submitted papers on most topics, and has been an active participant at all meetings. Where possible, the Ad Hoc Group endeavors to prepare draft recommendations on the topics it discusses which it forwards to the Antidumping Committee for consideration. To date, the Committee has adopted on Ad Hoc Group recommendation on pre-initiation notifications under Article 5.5 of the Agreement.

At Marrakesh in 1994, Ministers adopted a Decision on Anticircumvention directing the Antidumping Committee to develop rules to address the problem of circumvention of antidumping measures. In 1997, the Antidumping Committee agreed upon a framework for discussing this important topic and established the Informal Group on Anticircumvention. Per the framework, the Informal Group held meetings in April and October 1999 to discuss the topic of “what constitutes circumvention.”

### **Assessment of the First Five Years of Operation**

Antidumping rules provide a remedial mechanism which WTO Members have agreed is necessary to the maintenance and health of the multilateral trading system. Without this and other trade remedies, there could have been no agreement on broader GATT and later WTO packages of market-opening agreements, especially given the imperfections which remain in the multilateral trading system. While WTO rules ensure that antidumping actions are governed by objective and transparent standards and procedures, these rules continue to be founded on the principle set out in Article VI of the GATT 1994 that injurious dumping is to be condemned. The WTO, therefore, sets out rules and procedures that ensure the legitimate actions taken against injurious dumping are grounded in the rule of law and due process, building upon the standards that have been ingrained in U.S. antidumping statutes for decades.

Antidumping rules are necessarily complex. Yet they have come to be used by a growing circle of countries, especially in the developing world. Unlike the situation prior to entry into force of the WTO, when only a handful of countries were held to the relatively more rigorous requirements of the Tokyo Round Antidumping Code, the Antidumping Agreement resulting from the Uruguay Round sets the standard by which all WTO Members must act if they choose to take measures to combat injurious dumping. This means that developing countries and countries in transition from centrally-planned to market economies are, in essence, learning the rules as they implement them. This can understandably lead to frustrations with compliance, and concerns that the existing rules are too difficult or onerous for some to apply. The United States understands these concerns, which explains why we have chosen to place so much emphasis on improving the implementation of existing antidumping rules – including through technical cooperation and

assistance – versus a reopening of those rules that would lead to ever greater complexities and difficulties of implementation.

In light of these needs, the work of the Antidumping Committee and its subsidiary bodies takes on even greater importance than it would otherwise have. Their work over the past five years has been essential in anchoring the importance and usefulness of multilateral antidumping rules for the world trade system. The Committee's work has helped ensure that Members understand their commitments under the Antidumping Agreement and can develop the tools to implement them properly. By providing opportunities to discuss Members' legislation, policies and practices, and views on controversial topics such as the need for rules on anticircumvention, the Committee's work assists all Members in conducting antidumping investigations and adopting antidumping measures in conformity with the detailed provisions of the Agreement. To date, Members have requested the establishment of dispute settlement panels to review the consistency of antidumping measures with the Agreement in relatively few instances. The work of the Committee has played a role in ensuring that Members take their commitments seriously.

The United States is a key actor in the work of the Antidumping Committee and its subsidiary bodies. This has had several important ramifications. First, U.S. participation has demonstrated the importance of the antidumping rules in the multilateral trading system. Second, U.S. participation has provided an opportunity to showcase the U.S. antidumping laws both for their detail and intrinsic consistency with the provisions of the Antidumping Agreement, and as a model for other Members to consider when adopting and amending their own antidumping rules. Finally, U.S. participation in the Committee and bilaterally with other Members has been successfully used to serve the interests of U.S. exporters whose products are subject to antidumping investigations by other Members. The Office of the United States Trade Representative, assisted by the Department of Commerce, regularly follows antidumping investigations ongoing in other countries that affect U.S. exporters. Where warranted, the United States engages other Members in bilateral discussions to resolve issues arising under the Antidumping Agreement that affect U.S. exporters. The United States has also raised other Members' antidumping investigations affecting U.S. exports for discussion in the Antidumping Committee. Finally, in one instance, the United States has successfully challenged the antidumping measure of another Member in dispute settlement proceedings, and remains prepared to take such action in the future if appropriate.

### **Major Issues in 1999**

The Antidumping Committee's work remains an important avenue for ensuring Members' understanding of the detailed provisions in the Antidumping Agreement, and for providing opportunities for discussing Members' views on the interpretation and application of the Agreement's provisions.

In 1999, the Antidumping Committee held two regular meetings, in April and October, as did the Ad Hoc Group on Implementation and the Informal Group on Anticircumvention. At its meetings, the Antidumping Committee focused on implementation of the Antidumping Agreement, in particular, by continuing its review of Members' antidumping legislation. The Committee also reviewed the reports that the Agreement requires Members to provide of their preliminary and final antidumping measures and actions taken in each case over the preceding six months.

Among the more significant activities undertaken in 1999 by the Antidumping Committee, the Ad Hoc Group on Implementation and the Informal Group on Anticircumvention are the following:

*Notification and Review of Antidumping Legislation:* The Antidumping Committee reviewed 14 notifications of new or amended antidumping legislation, and also reviewed one notification of legislation which had been previously reviewed. Members, including the United States, were active in formulating written questions and in making follow-up inquiries at Committee meetings. The regulations of the U.S.

Department of Commerce on procedures for sunset reviews were reviewed as a part of this process at the Committee's October meeting. Eight Members put forward written questions regarding these regulations which the United States answered in detail, both orally and in writing.

*Notification and Review of Antidumping Actions:* Twenty-five Members notified antidumping actions taken during the first half of 1999. These actions, in addition to outstanding antidumping measures currently maintained by WTO Members, were identified in semi-annual reports submitted for the Antidumping Committee's review and discussion.

*Ad Hoc Group on Implementation:* At its April meeting, the Ad Hoc Group discussed seven of the topics which the Antidumping Committee referred to it for discussion: (i) treatment of confidential information under Article 6.5, (ii) sampling methods, (iii) "special circumstances" in Article 5.6, (iv) the provision for hearings in Article 6.2, (v) public notices under Article 12, (vi) content of affirmative preliminary determinations, and (vii) duty assessments under Article 9. Members submitted papers on these topics, and the WTO Secretariat compiled information that Members had provided for previous meetings on their practices concerning hearings and the disclosure of essential facts. The Group also gave consideration to draft recommendations on two topics: the period of data collection for a dumping investigation and the provision of essential facts and disclosure of findings under Article 6.9. Members offered views on these draft recommendations and agreed that further work on them was required. Finally, the Ad Hoc Group discussed suggestions for new topics and forwarded a list of these topics to the Antidumping Committee. The Committee agreed that the Ad Hoc Group should begin discussing six new topics: (i) practical issues and experience in applying Article 2.4.2, (ii) termination of investigations under Article 5.8 in cases of *de minimis* import volume, (iii) practical issues and experience in cases involving cumulation under Article 3.3, (iv) practical issues and experience with respect to questionnaires and requests for information under Articles 6.1 and 6.1.1, (v) practical issues and experience in providing opportunities for industrial users and consumer organizations to provide information under Article 6.1.2, and (vi) practical issues and experience in conducting "new shipper" reviews under Article 9.5.

At its October meeting, the Ad Hoc Group began discussing the six new topics that the Committee referred to it. The United States submitted papers on all of these topics and participated actively in the discussion. Many other Members also submitted papers. The Group also discussed new drafts of the recommendations on the period of data collection for a dumping investigation and the provision of essential facts and disclosure of findings under Article 6.9.

The Ad Hoc Group has opened important opportunities for Members to examine issues relating to the implementation of the Antidumping Agreement, and the United States has been a key participant in the work of this Group. The annual report of the Antidumping Committee notes the satisfaction expressed by the Committee's chairman on the high level of participation by Members and the presence and participation in Geneva of experts from Members' capitals.

*Informal Group on Anticircumvention:* The Antidumping Committee's establishment of the Informal Group on Anticircumvention in 1997 marked an important step in taking up the Decision of Ministers at Marrakesh to refer this matter to the Committee. At its 1999 meetings, the Informal Group on Anticircumvention had productive discussions on the subject of "what constitutes circumvention." For the April meeting, the United States submitted a paper providing examples from U.S. practice of what types of facts have resulted in findings that circumvention of an antidumping order was or was not taking place. The United States also replied to questions from Hong Kong and Japan received at the October 1998 meeting. The Republic of Korea submitted a paper regarding the circumvention inquiry the United States conducted on color television receivers, which was ended with a withdrawal by the U.S. industry of its request for this inquiry. At the end of the October meeting, Members agreed that it was appropriate to consider the second item in the

agreed framework: “what is being done by Members confronted with what they consider to be circumvention.” The first topic, “what constitutes circumvention”, will remain open for further discussion.

### **Work for 2000**

Work in 2000 will continue in all of the areas that the Antidumping Committee, the Ad Hoc Group on Implementation and the Informal Group on Anticircumvention addressed this past year. The Antidumping Committee will continue to review Members’ notifications of antidumping legislation, and Members will continue to have the opportunity to submit additional questions concerning previously reviewed notifications. This on-going review process in the Committee is important to ensuring that antidumping laws around the world are properly drafted and implemented, thereby contributing to a well-functioning, liberal trading system. As notifications of antidumping legislation are unrestricted documents, it will remain possible for U.S. exporters to have access to the antidumping laws of other countries in order to better understand their operation and to take them into account in commercial planning.

The preparation by Members and review in the Committee of semi-annual reports and reports of preliminary and final antidumping actions will continue in 2000. The 1996 decision of the WTO General Council to liberalize the rules on the restriction of WTO documents has resulted in these reports also becoming accessible to the general public, in keeping with the objectives of the Uruguay Round Agreements Act. (Information on accessing WTO notifications is included in Annex II.) This has been an important development in ensuring the merited degree of public awareness regarding Members’ antidumping actions.

The discussions in the Ad Hoc Group on Implementation will continue to provide opportunities for the United States to learn in more detail about the administration by other countries of their antidumping laws, particularly by those Members that have newly enacted legislation. This process is important because it sheds light on the operational practices of Members in implementing their obligations under the Antidumping Agreement. The process has led to the Committee’s adoption of one Ad Hoc Group recommendation regarding notifications under Article 5.5 of the Agreement, and two more draft recommendations are in the final stages of consideration by the Group. As Members continue to submit papers on the topics being considered and participate actively in the discussions, it is anticipated that the Group’s utility will continue to be confirmed.

The work of the Informal Group on Anticircumvention will continue to be pursued in 2000, according to the framework for discussion which Members agreed. Many Members, including the United States, recognize the importance of using the Informal Group to pursue the 1994 decision of Ministers at Marrakesh, who expressed the desirability of achieving uniform rules in this area as soon as possible.